

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as "CITY," and LYNN BROWN, M.D., hereinafter referred to as "DR. BROWN".

### **I. INTRODUCTION**

The CITY has established, as a function of CITY government, a system of emergency medical services (the "EMS system") operated and maintained under the direction of Overland Park Fire Department which provides for the delivery of emergency care as may be required by an emergency within or without the boundaries of the City of Overland Park, Kansas.

Pursuant to K.S.A. 65-6126, each emergency medical service shall have a medical adviser appointed by the operator of the service to review, approve and monitor the activities of the attendants.

DR. BROWN represents that he is familiar with the design and operation of emergency medical services systems and is duly licensed in the practice of medicine and qualified as a medical doctor to provide the CITY with such advisory services.

THEREFORE, in consideration of the above, the mutual promises hereinafter given, and for other good and valuable consideration, the parties agree as follows;

### **II. PURPOSE**

The CITY desires to retain the professional services of DR. BROWN to perform those specified duties and responsibilities as Medical Director and to advise the CITY, through the Overland Park Fire Department on matters relating to the operation of the CITY's EMS system; and DR. BROWN agrees to provide such services in accordance with the terms and conditions of this Agreement.

### **III. CONTRACT TERM**

A. Initial Term. The initial term of this Agreement shall be for the period beginning with the date on which the last party signs and ending January 1, 2005 (hereinafter the "initial term"), subject to the terms and conditions herein contained.

B. Renewal Term. The parties agree that this Agreement may be renewed by mutual written consent of DR. BROWN and the CITY, or its duly authorized representative.

### **IV. SCOPE OF SERVICES**

During the term of this Agreement, it is the intent of the parties that DR. BROWN shall serve as the designated Medical Director. DR. BROWN agrees to perform those duties and

responsibilities set forth in the attached Exhibit A, which is incorporated herein by reference. The CITY, however, understands and agrees that DR. BROWN may, out of necessity, engage the help of other physicians. This understanding does not relieve DR. BROWN of his obligations as the primary contractor under this agreement.

## **V. COMPENSATION**

A. Basic Compensation. As compensation for the satisfactory performance of services rendered during the initial term of this Agreement, the CITY agrees to pay DR. BROWN TEN THOUSAND AND 00/100 Dollars (\$10,000) on or before December 31, 2003. The CITY will not, however, be responsible for compensating any other physicians who may occasionally perform some of the duties required under this Agreement at the direction of DR. BROWN.

B. Renewal Compensation. Unless otherwise agreed to by both DR. BROWN and the CITY, or its duly authorized representative, compensation for any renewal term shall be the amount stated above in Paragraph A. This compensation shall be paid on or before December 31 of each renewal term.

C. Compensation Upon Termination. Upon termination of this Agreement, for any reason, during either the initial or any renewal term, the compensation due and payable to DR. BROWN shall be prorated according to the number of calendar months for which services were performed.

## **VI. EXPENSES**

A. Expenses Payable by DR. BROWN. In the performance of services under this Agreement, DR. BROWN shall be responsible for and shall pay, without any obligation of the CITY, for any and all of the following costs and expenses:

1. Costs and expenses for any personnel employed or contracted for by DR. BROWN;
2. Costs and expenses for food, lodging, travel, living and other expenses for the performance of services rendered under this Agreement, unless otherwise agreed to by both DR. BROWN and the CITY, or its duly authorized representative;
3. Registration fees, taxes or other charges with respect to qualifying as a licensed medical practitioner;
4. Equipment, supplies and material goods belonging to or used by DR. BROWN, including computers, telephones, modems, paper and other office goods or equipment, except that the CITY shall pay for a connection to the internet in an amount not to exceed \$50.00 per month;
5. Professional or organizational dues, costs or expenses, unless otherwise agreed to by both DR. BROWN and the CITY, or its duly authorized representative;

6. Office space, furnishings, equipment and related operating costs;
7. Insurance, including but not limited to, medical malpractice insurance, benefits, medical costs and similar expenses;
8. Workers compensation, FICA and other related self employment taxes, costs or charges; and
9. Any other cost or expense incurred by DR. BROWN and not expressly authorized and agreed for payment by the CITY, or its duly authorized representative.

B. Expenses Payable by the CITY. When services are performed under this Agreement, the CITY shall and hereby agrees to pay and/or reimburse DR. BROWN for the following costs and expenses:

1. Any costs and expenses for photocopying and distribution of reports, documents or other written items prepared by or for DR. BROWN relative to the duties and services required of DR. BROWN under this Agreement;
2. Automobile travel expenses and mileage, at the rate established for mileage reimbursement under the CITY's travel policy, for travel to and from out of town conferences. Routine in town travel expenses will not be reimbursed unless otherwise mutually agreed upon ahead of time;
3. The costs and expenses for the furnishing and maintenance of equipment, belonging to the CITY, authorized and provided by the Fire Chief of the CITY for use by DR. BROWN in the performance of his duties and services under this Agreement; and
4. Costs and expenses requested by DR. BROWN and authorized and approved by the CITY, or its duly authorized representative.

## **VII. STATUS**

The CITY and DR. BROWN expressly agree that, in the performance of all duties and obligations arising under this Agreement, DR. BROWN shall be considered an independent contractor. Nothing in this Agreement or in any relationship between the CITY and DR. BROWN shall establish or be construed to establish any employment or agency relationship between DR. BROWN and the CITY or its officials, agencies, commissions or departments. DR. BROWN shall not, at any time, hold himself out to be or represent that he has authority as an employee or agent of the CITY.

## **VIII. OFFICE ASSISTANCE**

Whenever, in the performance of his services, DR. BROWN is required or requested to be available at the CITY offices, then DR. BROWN shall have access to and the use of office

space, facilities, staff, equipment and other assistance, furnished through Overland Park Fire Department, at no cost to DR. BROWN.

## **IX. INSURANCE AND INDEMNITY**

A. Insurance. DR. BROWN shall be responsible for and hereby agrees to maintain adequate insurance, as may be required by law, for all obligations required under this Agreement, including but not limited to automobile coverage, liability coverage, workers compensation, medical malpractice coverage, and errors and omissions.

B. Indemnity. DR. BROWN agrees to defend, indemnify and hold harmless the CITY, the CITY's agents, employees and assigns from any and all lawsuits, claims, settlements, and judgments for personal injury, bodily injury, property damage and/or death or any other basis, arising solely out of DR. BROWN's or any of his agents, servants and/or employees' negligent or purposeful acts, and or failure to act in the performance of this Agreement.

DR. BROWN shall not be responsible for claims, expenses, damages, or liability for personal injury or damage to property, directly or indirectly arising from the negligent or wrongful act of CITY, its officers, employees, agents and volunteers and/or failure to act in the performance of this Agreement.

## **X. NON-ASSIGNMENT**

This Agreement shall not be assigned nor transferred by DR. BROWN, and the rights, obligations or benefits of this Agreement shall not apply to nor inure to the benefit of any other person or representative of DR. BROWN, except as provided for in Article IV of this Agreement.

## **XI. RECORDS; PROPERTY OF CITY**

A. Records. DR. BROWN shall maintain full and accurate records of all matters covered by this Agreement, and the CITY, or any of its duly authorized representatives, shall have free access during reasonable business hours to such records, documents and materials. At the termination or expiration of this Agreement for any reason, DR. BROWN shall deliver to the CITY all such documents, records or materials then in DR. BROWN's possession.

B. Property Rights. All property owned and provided by the CITY to DR. BROWN in the performance of his duties shall remain the property of the CITY, and DR. BROWN agrees to exercise due care in the use and safekeeping of such property. All documents, reports, work product, information and other records or files arising out of the performance of services under this Agreement shall remain the sole property of the CITY, free of any claim or right of DR. BROWN, and all such property and records shall be returned to the possession of the CITY as requested by the CITY, or its duly authorized representative.

## **XII. CONFIDENTIALITY**

DR. BROWN agrees that he will not release any information provided to him or to which he may have access which is or may be confidential or proprietary information.

## **XIII. AMENDMENT**

This Agreement may be amended by supplemental writing mutually agreed to and signed by both parties.

## **XIV. COORDINATION OF SERVICES**

DR. BROWN shall coordinate all duties, responsibilities and services to be provided by him under this Agreement with the Fire Chief, or the Fire Chief's designee. Whenever this Agreement requires, or it becomes necessary for, DR. BROWN to advise, provide or communicate information to, or seek approval of, the CITY in matters relating to DR. BROWN's services hereunder, DR. BROWN shall direct all such communications and requests for approval to the Fire Chief, or the Chief's designee. Further, DR. BROWN shall meet with the Fire Chief, or the Chief's designee, on a periodic basis to coordinate any and all duties, responsibilities and services required of DR. BROWN under this Agreement.

The parties acknowledge that the CITY currently provides EMS services in partnership with Johnson County Med-Act pursuant to a separate agreement. The CITY further understands and agrees that DR. BROWN'S obligations under this Agreement are to the CITY and he has no duties or responsibilities with regard to the functions of Johnson County Med-Act or its employees under this agreement.

## **XV. NON-DISCRIMINATION**

DR. BROWN agrees that:

1. He shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
2. in all solicitations or advertisements for employees, he shall include the phrase, "equal opportunity employer", or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. if he fails to comply with the manner in which he reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, he shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the CITY;

4. if he is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, he shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the CITY; and

5. DR. BROWN shall include the provisions of subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subvendor or vendor.

The provisions of this section shall not apply if DR. BROWN:

(a) employs fewer than four employees during the term of such contract; or

(b) if his contract(s) with the CITY cumulatively total \$5,000 or less during the fiscal year of the CITY.

DR. BROWN agrees, that he shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local government agency in connection therewith.

## **XVI. NOTICES**

Any notices, bills, invoices, reports, payments or correspondence required or permitted by or from one party to the other under this Agreement shall be made in writing, delivered personally, or by United States mail, postage prepaid to the following addresses, or other location as either party may from time to time designate:

CITY:

Steve Isaacson  
Overland Park Fire Department  
9550 West 95<sup>th</sup> Street  
Overland Park, Kansas 66212  
(913) 888-6066

DR. BROWN:

Lynn Brown, M.D.  
14760 Eby  
Overland Park, Kansas 66219  
(913) 681-2478

## **XVII. WAIVER OF BREACH**

The waiver of any party of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

## **XVIII. TERMINATION**

A. Mutual Agreement. This Agreement may be terminated at any time by written agreement of both DR. BROWN and the CITY.

B. By the CITY. This Agreement may be terminated at any time by the CITY upon giving thirty (30) days written notice to DR. BROWN.

C. By DR. BROWN. This Agreement may be terminated at any time by DR. BROWN upon giving thirty (30) days written notice to the CITY.

D. For Cause. Either party may terminate this Agreement for cause at any time immediately upon giving written notice to the other party.

## **XIX. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Kansas.

## **XX. SEVERABILITY**

All Agreements, covenants and clauses contained herein are severable. In the event any of them shall be deemed or held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreement, clause and covenant were not contained herein.

## **XXI. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the CITY and DR. BROWN with respect to the provision of services required of DR. BROWN by the CITY under this Agreement, and supersedes all prior understandings or promises, whether oral or written, between the parties pertaining to the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in five (5) counterparts by their duly authorized representatives the day and year first above written.

LYNN BROWN, M.D.

CITY OF OVERLAND PARK, KANSAS

By \_\_\_\_\_  
Lynn Brown, M.D.

By \_\_\_\_\_  
Ed Eilert, Mayor

ATTEST:

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ATTEST:

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Marian Cook, City Clerk

APPROVED AS TO FORM:

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Tammy M. Owens  
Assistant City Attorney II

EXHIBIT A  
SCOPE OF SERVICES

To optimize the medical direction of the CITY of Overland Park, Kansas Emergency Medical Services System ("EMS"), DR. BROWN, functioning as Medical Director, shall:

1. Serve as patient advocate in the EMS system.
2. Serve as an advocate for pre-hospital providers within the EMS system and medical community at large.
3. Through active involvement with the county medical society EMS committee and/or other EMS agencies, establish, continuously review and maintain:
  - a. Protocols and/or standing orders under which the city EMS operates
  - b. The criteria for initial emergency response
  - c. The criteria for determining patient destination
  - d. The criteria, protocols and procedures under which non-transport of patients may occur
  - e. The criteria for on-scene physician involvement
  - f. The criteria for concurrent medical direction
4. Ensure the appropriate initial qualifications of EMS personnel involved in patient care within OPFD.
5. Ensure the qualifications of EMS personnel involved in patient care are maintained on an ongoing basis through education, testing, and credentialing.
6. Recommend certification, recertification, and decertification of EMS personnel to the appropriate certifying agency within the confines of Kansas' statutes.
7. Develop, implement, and maintain an effective quality management program;
  - a. For continuous system and patient care improvement,
  - b. To ensure compliance with patient care standards
  - c. To recommend future education and training needs
8. Maintain liaison with the medical community including, but not limited to, hospitals, emergency departments, physicians, pre-hospital providers, and nurses.
9. Interact with regional, state and local EMS authorities to ensure that standards, needs, and requirements are met and resource utilization is optimized.
10. Aid in coordination of activities such as mutual aid, disaster planning and management, and hazardous materials response.

11. Aid OPFD and the City in promulgating public education and information on the prevention of emergencies.
12. Maintain knowledge levels appropriate for an EMS medical director through continued education.